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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,008	07/24/2001	Jeffrey Grayzel	129336-00040	5219
31013	7590	07/15/2004	EXAMINER	
KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 919 THIRD AVENUE NEW YORK, NY 10022			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912,008

Applicant(s)

GRAYZEL ET AL.

Examiner

Vy Q. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-173 is/are pending in the application.
- 4a) Of the above claim(s) 24-32 and 41-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 48-173 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/17/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15, 17-20, 48, 50-52, 55, 57-75, 77, 82, 85-86, 88-109, 111-114, 118, 120-122, 125, 127-145, 147, 152, 156, 158-171 are rejected under 35 U.S.C. 102(b) as being anticipated by SCHUBERT (DE 3402573 A1).

As to claims 1-15, 17-20, 48, 50-52, 55, 57-75, 77, 82, 85-86, 88-109, 111-114, 118, 120-122, 125, 127-145, 147, 152, 156, 158-166, SCHUBERT (Fig. 1-6) discloses balloon 2, stiffening members 1, filaments 4 indirectly connecting one to another as recited in the claims. Notice that filaments 4 can be considered as elastic or inelastic because “elastic” and “inelastic” are relative terms.

As to claims 167-171, SCHUBERT inherently discloses a method of using the device as recited in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 21-23, 49, 53-54, 56, 76, 78, 80-81, 83-84, 87, 110, 115-117, 119, 123-124, 126, 146, 148-151, 153-155, 157 and 172-173 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHUBERT (DE 3402573 A1).

As to claims 16, 21-23, 49, 53-54, 56, 76, 78, 80-81, 83-84, 87, 110, 115-117, 119, 123-124, 126, 146, 148-151, 153-155 and 157, SCHUBERT (Fig. 1-6) discloses substantially all structural limitations of the device as claimed, except for changes in shapes, arrangements of the stiffening members relative to the balloon. However, the modifications as recited in the claims from SCHUBERT are minor modifications and choices of design, which are quite within level for a person of ordinary skill in the art to make. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify SHUBERT device to have the features as recited in the claims as these modifications are only choices of design.

As to claims 172-173, SCHUBERT device have projections to engage and secure a stent/stent-graft during deployment along a tortuous vessel. It would have been obvious to one of ordinary skill in the art at the time of the invention to use SHUBERT device in a manner as recited in the claims so that one can retain the stent/stent-graft with SHCUBERT balloon catheter during deployment of the device along a tortuous blood vessel.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



07/09/2004

Vy Q. Bui
Primary Examiner
Art Unit 3731